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## ADVISORY COUNCILS IN RAILWAY ADMINISTRATION.

The bill pending before Congress, to establish a department of commerce and industry under the direction of a secretary who shall have a place in the cabinet, and the probability of this bill being enacted into law, have suggested this paper on advisory councils in railway administration. Whatever else the new department may or may not include, it is hardly conceivable that it will be permanently organized without having assigned to it some functions with respect to railways. As a cabinet officer, the new secretary will be impelled to take and to maintain a national point of view, taking into consideration all the important factors necessary to make the railways of the United States valuable properties as well as the most useful public servants.

It has been truly said that the world was born again with the introduction of railways. Many changes in industrial, commercial, social and political relations followed, and have continued to come, so that every succeeding day brings us a new world with its changed relations, calling for continual readjustment to these new conditions. In this process of readjustment there takes place a conflict of diverse and antagonistic interests, the weaker or less important yielding to the stronger or more important. The assertion that the interests of the railways and of the public are harmonious and identical cannot prevent conflicts, for neither the entire public nor every railway manager will view the situation in this light. There certainly exist elements of harmony in the interests represented by the railways on the one hand and by the public on the other. For instance, a railway company extends its system into new and remote territory, thereby increasing the value of the lands and other property

in that territory. A new source of supply has been tapped and the traffic of the road is proportionately increased. With the increase in traffic and the rise in value of other property in that territory the railway property becomes more valuable, and thus increases the sources of public revenue. Up to this point there exists harmony; but the possibilities of a conflict of interests must not be overlooked. The railway property having become very valuable, the authorities of the state may assess this property to a degree which the railway authorities regard excessive; or the railway company may levy a transportation charge which the public considers excessive, or it may give preferences to one industry or place or productive area over another industry, place or area.

This lack of harmony between the two great parties may be due to a lack of mutual appreciation of each other's rights and privileges; it may be due to ignorance, to unscrupulousness, to intrinsically irreconcilable points of view, to extraneous factors over which neither can exercise control, or to numerous other contingencies. Whatever the cause, the possibility of a conflict usually exists in those elements of railway transportation which are not embraced in that part of the business representing purely harmonious and identical interests. This paper will be devoted to suggestions for arriving at a better understanding of questions in dispute and for facilitating the exchange of views and conciliation of interests on the part of all the factors involved in railway problems.

Before entering upon a discussion of these suggestions, three propositions will be stated, which the writer regards incontrovertible, but which he shall not discuss in this connection, although he is prepared to support them with ample evidence and without fear of successful contradiction. These propositions are:

1. That the present situation with respect to railway affairs in the United States is untenable and indefensible.
2. That the great majority of the railway managers and

other railway officials are sincerely desirous of administering, to the best of their abilities, the properties under their control in the most efficient manner, having due regard for the interests of both the stockholders and the public; but that all the various interests affected by their action are not represented in proportion to their importance, if at all; and that consequently injustice may be done.

3. That there is nothing in the present statutory and administrative regulation of railways to prevent the arbitrary and harmful action of the weak or unscrupulous manager from defeating the desires of the majority of the officials who would voluntarily pursue a more beneficent course.

In the Annual Report for 1898, the Interstate Commerce Commission said : "The situation has become intolerable, both from the standpoint of the public and the carriers. Tariffs are disregarded, discriminations constantly occur, the price at which transportation can be obtained is fluctuating and uncertain. Railroad managers are distrustful of each other and shippers all the while in doubt as to the rates secured by their competitors. . . . Enormous sums are spent in purchasing business and secret rates accorded far below the standard published charges. The general public gets little benefit from the reductions, for concessions are mainly confined to the heavier shippers." That the situation here described is as oppressive to the railways as it is odious to shippers no one will doubt. In view of this prevailing demoralization, the Commission called conferences with railway presidents during the following year which appear to have accomplished considerable good. At a time when published tariffs constitute little more than "a basis from which to calculate concessions and discriminations" anything which is likely to assist in re-establishing order must be approved.

The Commission chose a plan which is of wider application and which is of importance in its bearing upon the subject of advisory councils; for what were these

conferences but modifications of the advisory council system? In extending invitations to officials, neither existing nor former railway associations were taken into consideration. "The selection in each case was made with reference to the territory in which different connecting and competing lines operate, and the rate conditions in that territory, and not with reference to the relations of the carriers through organized associations or otherwise." Nor were attempts made to carry out a system of individual conferences; not only because this would consume much more time, but also and chiefly because "each road in promising to observe its own tariffs, and intending in good faith to keep that promise, needs the assurance that its competitors will also in good faith observe their tariffs." Mutual and concurrent promises, says the Commission, are necessary to secure conformity to the Act to regulate commerce. This is but another way of expressing a part of the third proposition formulated above. As for practical results, "the Commission believes that the propriety of holding these conferences has been fully vindicated by the results which have followed." Editorials in the *Financial Chronicle* and other leading journals comment favorably on the probable influence of these conferences.

The conferences between the Interstate Commerce Commission and railway officials represent efforts aiming primarily towards a better understanding among different railways, leaving the equally important and larger question of the relation of the railways to the great diversity of interests in their respective territories essentially without adequate expression, even if these conferences were to be made a permanent feature in railway administration. Conferences representing *all* the varied interests affected by railways, which means practically the whole population, must be provided for before a complete exchange of opinions and mutual understandings can be secured. The railways have by no means been entirely neglectful of this important work. Special agents

have been sent out by them to make a careful study of the industrial and social conditions of the territory through which their respective roads pass, and to "explain the attitude of the railways and to learn conditions." In *Harper's Magazine* for February, 1901, mention was made of a general freight agent who has associated with him 100 assistants who instruct and educate the people in the knowledge that makes for the prosperity of the railways and of the agricultural and industrial classes. Railways have studied soils and given instruction to farmers in stock and grain raising, dairying, gardening, market conditions, and business methods. They have maintained a large specialized class of employees to assist in developing the resources of the territory through which they run, and have in this manner increased appreciably the variety, quantity and quality of the commodities shipped out of the respective states. Railways have employed industrial commissioners, land inspectors, horticultural agents, superintendents of dairies and a host of similar officers whose functions are chiefly, if not solely, economic and social, and whose existence is in itself ample evidence of the necessity of providing some means by which the social and economic interests of the country can be brought into close and harmonious relations with the railways.

On the other hand, chambers of commerce, boards of trade, business men's associations, agricultural societies and analogous organizations have maintained departments, bureaus, secretaries, or standing committees on transportation, with the view of guarding and promoting the interests of their respective clienteles, in so far as these may be affected by railway transportation. Delegates and committees have held conferences with railway managers and other railway officials. Resolutions have been passed and laws proposed looking toward a change in the existing relations between the railways and these people. But such efforts have usually been one-sided, emanating either from the rail-

ways or from the shipping public, acting independently of one another, with perhaps little accurate knowledge of each other's points of view. There exists no regularly constituted middle ground on which the two parties can meet and deliberate, on the basis of authentic facts, and arrive at conclusions just and satisfactory to both and in accordance with the needs of the whole population, viewed in the broadest possible light.

Having seen that both the railways and the public have been feeling for each other, but that an uncovered suture still remains between them, the writer ventures to suggest a plan which may at least serve as a point of departure for the discussion of the wide and momentous questions involved, and possibly the plan may embody elements capable of elaboration into permanent arrangements. It should be understood, however, and this the writer desires expressly to emphasize, that his plan is suggestive only, that it is not given with dogmatic assertions as to its practicability, nor with the inference that it is complete and perpetual. Many conferences will have to be held, numerous hearings given, much deliberation engaged in, and a multitude of facts considered before a final working plan can be adopted. The interests involved are so enormous, and the possibilities of a conflict so great, that nothing but a large, tolerant and analytically accurate view can meet the situation.

The leading features of the plan here suggested are the following: The establishment by law of a system of state and interstate councils, having advisory power only, and representing all the various interests of the entire population as far as practicable. State councils might be organized in connection with state railway commissions, where these exist, or independently in those states which have no commissions. The size of state councils might vary with railway mileage, and the number and importance of the existing commercial and agricultural organizations. Both the elective and the appointive principles might be applied, the former

to insure representation and the latter to secure expert knowledge and specialized efficiency. The proportion of appointive to elective members might be made to vary whenever adequate reasons for such variation are properly presented to the secretary of commerce or other higher official, although at least three-fourths of the aggregate membership should perhaps be made elective. The governors of the respective states naturally suggest themselves as proper officers to exercise the appointing power with respect to state councils, and the President of the United States, through the secretary of commerce, for interstate councils. The elective members should represent, in addition to persons representing the railways, all the various state organizations which meet prescribed requirements existing within that state, and which have primarily intrastate significance. Among these societies may be mentioned boards of trade, chambers of commerce, exchanges, business men's associations, associations of lumbermen, grocers, butchers, foundrymen, all the various manufacturers, dairymen, fruit growers, agricultural societies, etc. The members to be appointed by the governor might be selected partly with the view of equalizing the representation of different interests. No paid officials would be necessary, with the possible exception of a permanent secretary, who could be attached to the office of the railway commission or some other high administrative officer. It would not even be necessary to pay the expenses of the council out of the public treasury, for a small tax on the organizations represented, which their interests could doubtless well afford to pay, would be sufficient to defray the expenses of the representative. Certainly no salaries or per diem rates ought to be paid out of public funds during the formative period of the councils. If future development should demonstrate the desirability of payment to members the law could be modified to meet the situation. Periodical meetings should be provided for, perhaps quarterly, and the interval of time between the meeting of state and interstate

councils should be sufficiently long to enable the latter to review thoroughly the proceedings and recommendations of the former. All meetings should be public and the proceedings printed.

The territorial basis of interstate councils is not so easily defined, because of the different things which may be regarded as fundamental in such a division of the area of the United States. The Interstate Commerce Commission has adhered to its original classification of railways into ten groups, based upon topographical considerations, density of population, nature of industrial life and competitive conditions, although, in regard to the last, the Commission expressed itself as unable to discover system in railway competition at the time the classification was made. To organize one interstate council for each of these ten groups would make the higher councils too numerous, and, under present conditions, it would hardly bring together representatives of those roads which belong together from the point of view of ownership and of rivalry in the same productive areas. A second possibility, is the organization of an interstate council for each of the systems of railways, among which a community of interests has been established. But this, too, would involve ten or a dozen councils and an administrative separation of railways which belong together. The third, and what appears to be the most feasible plan, is that of accepting the present territorial limits of the dominating freight classifications and organize an interstate council within each of them, with the possible division of the territory west of the Mississippi. This would make three interstate councils; one north of the Ohio and Potomac rivers and east of the Mississippi; the second south of the Ohio and Potomac rivers and east of the Mississippi; and the third for the territory west of the Mississippi. The distribution and election or appointment of members should be governed by the same principles as those which have been suggested for state councils. Each of the great railway systems should have

representatives, perhaps on a mileage basis. The great national associations, such as the millers', builders', drug-gists', grocers', liquor dealers', etc., might be requested to send a representative to some one of the three interstate councils; and, finally, the state councils lying within any one of these interstate divisions should elect representatives to membership in the higher council. In case a state lies partly in one and partly in another interstate district, the secretary of commerce or other officer might designate the proportion of representation to be allotted to each part, in accordance with law. The proceedings should also be public and published by the government. The Interstate Commerce Commission, every member of which should be made *ex officio* a member of the interstate councils, might supervise the publication of proceedings.

The aim of the suggested plan is obvious: to represent all the varied interests of our population *in an advisory capacity*, in the conduct of our railways. These councils are to be clearing houses of information through which the railways and the public will learn to know each other's interests better, and through which the material interests of both of these great parties will be built up in accordance with principles of justice and equity. Every attempt to interfere in the purely business management of a railway should be resisted; but every attempt on the part of a railway to disregard the just rights of the public should likewise be promptly checked and thoroughly ventilated in the councils. The authenticated facts which such councils can bring together and the publicity which is to be given them cannot help but exert a powerful influence in educating the public in railway affairs and enlighten the railways on the interests of the public. By giving councils only advisory powers, the legal responsibility still remains where it belongs—in the hands of the railway officials. The advice and recommendations of councils need not be followed, but at the next meeting of the council the manager in question can be called

upon to give the reasons for his action; and with well-informed representatives about him, nothing but the truth can prevail. In this lies one of the greatest benefits to be derived from such a scheme, and it is difficult to conceive of a more potent factor in protecting the railways against each other, and in visiting obloquy upon the one weak or unscrupulous manager who persists in defeating the best plans of the one hundred who would adhere to principles of justice without legal compulsion.

The secretary of commerce has been mentioned in several connections, assuming that such a new cabinet office is to be created. It is to be hoped that such will be the case, and the proposed system of railway advisory councils be given a place in this new cabinet office. Should, however, Congress not see fit to establish a department of commerce the suggested councils could nevertheless be fitted into the present order of things by making the Interstate Commerce Commission the head of the advisory system. The Commission, being hard worked already, could perhaps exercise only directive and supervisory powers over the councils, but some officer in the offices of the Commission, or to be added to the Commission, could be intrusted with the detailed management of the council system. *The council system, as proposed, fits into the present order of things. There is nothing radical or disorganizing about it. It simply aims to bring together into one harmonious system the various isolated, independent efforts which have long been made by many railways in the United States and by private organizations. It aims to do systematically and well what is now attempted without system, in a manner more or less one-sided.*

Institutional history is largely the history of transplanted custom and law. The most fundamental institutions of American civilization find their origin in the remote history of European peoples, and scores of existing statutes, state and federal, are mere adaptations of foreign law to conditions in the United States. The suggested plan for railway coun-

cils is in harmony with this feature of our civic development. Advisory councils have been in successful operation in various countries, and any one who will take the trouble to look into their history will probably be convinced of their efficiency and beneficence. While most contemporary systems of councils exist in connection with state railways, *the advisory system finds its origin in private initiative.* About the time our granger agitation had reached its zenith, and when the Hamlet of the play had made his appearance in the form of the Potter law of Wisconsin, the Chamber of Commerce of the city of Mülhausen arranged for a conference between its representatives and representatives of a railway upon which that city was largely dependent. The result of the conference was so encouraging that it attracted the attention of a high state official, who immediately recognized the intrinsic merits of the plan and took action with the view of embodying its principles in a permanent institution. "This arrangement," says the minister in a circular letter, "primarily strives to establish intimate connection between the places intrusted with the administration of the railways and the trading classes. It will keep the representatives of the railways better informed as to the changing needs of trade and industry and maintain a continued understanding between them; and, on the other hand, it will impart to commerce, etc., a greater insight into the peculiarities of the railway business and the legitimate demands of the administration and consequently, by means of earnest and moderate action, it will react beneficially upon both sides through an exchange of views." It was only a few years later, 1882, when Prussia established her system of advisory councils, which twenty years of experience has demonstrated to be most excellent. There are circuit councils and a national council, the former constituting advisory bodies of the different railway directories in whose hands legal responsibility rests, and the latter being advisory to the minister of public works, who is the highest legally respon-

sible railway officer. The circuit councils are more local in their nature and vary in size from about twenty-five to three times that number. Membership is chiefly elective. The national council is composed of forty members, of whom ten are appointed by the minister of public works and thirty elected by the circuit councils. The councils may be called upon to deliver opinions on questions submitted to them by the proper officials, and they may, in turn, institute inquiries and make recommendations on their own motion. They have no legal power over the administration of railways, except in this advisory capacity, and full freedom is granted to railway officials to act as they deem best in the management of railway properties.

Japan was the next country to establish an advisory council by law. The Japanese council is composed of not more than twenty persons, representing the cabinet departments, both houses of parliament and, for special purposes, members with limited tenure, who serve as experts in the council. The powers of the council relate to questions of location, construction, financing and operation. While the department of communication and other branches of the government may direct inquiries to the council, the latter may also act on its own initiative and bring its conclusions and findings before the proper officials. A comparison of Japanese with Prussian councils shows important differences in their composition. Under the Prussian law bureaucracy is guarded against by the exclusion from the council of all immediate state officials. In Japan the law specifically provides for the inclusion in the council of cabinet officers and members of the legislature. Under the Japanese system it is possible to pack the advisory council with persons in harmony with the government, which *may* destroy the value of the council. While avenues of communication between legislatures and advisory councils should be kept open, the law should make it impossible for members of the legislature and state officers to hold a seat in an advisory council. State

legislatures and congress may wish to act on the findings of fact or recommendations of advisory councils, and if the membership of councils and legislatures can be made essentially one, the advisory nature of the councils will be annihilated. The exclusion of public officers and legislators from councils should be insisted upon.

In Switzerland, circuit councils and an administrative council were instituted by the federal law of 1897. Circuit councils embrace from fifteen to twenty members, of whom the Bundesrath elects four and the cantons eleven to sixteen. The higher or administrative council numbers fifty-five, of whom twenty-five are elected by the Bundesrath, an equal number by the cantons, and the remaining five by the circuit councils. The law expressly provides that in these elections agriculture, trade and industry shall be properly represented.

These three—Prussia, Japan and Switzerland—are the only countries in which advisory councils have been created by law. In a large number of other countries similar councils have been established through administrative agents, the composition and functions of the councils following the principles of the Prussian system. For a quarter of a century France has had a consulting committee of forty-five which is quite similar to the Japanese council in that its members are not elected but appointed chiefly from officials and members of the legislature, and that social and economic interests are represented only to a limited extent. The functions of this committee relate to approval of rates, construction of laws and ordinances, granting charters, railway agreements, stations, train-service, etc. It is similar to the advisory councils of the other three countries in that it may be called upon for opinions and undertake investigations on its own initiative. In Russia, the minister of trade appoints representatives of the agricultural and industrial classes ; the railway companies elect their members subject to the approval of the minister; and the Czar appoints representatives of the

departments of the cabinet. The Italian tariff council consists of higher ministerial officials and railway directors, while the supreme council is composed of general inspectors and chiefs of divisions, divided into three groups, each of which can act only on matters relating to the lines of interest represented by that group. Bavaria has an advisory council composed of twenty-five members appointed by the king. A number of the members are nominated by industrial organizations. Of the eighteen members in the council of Saxony, six are elected by chambers of commerce, five by agricultural societies, and seven are appointed by the minister of finance.

More than half a dozen other European states can be added to the list but it is unnecessary. Enough has been said to show that the system of advisory councils proposed for the United States is not a leap into the dark. It is a practical scheme, elaborated in various countries by practical men, and it has stood the test of experience. It involves no destruction of existing arrangements. It requires none but nominal appropriations out of the public treasury. It necessitates no important new machinery. In fact, it is but a bringing together of separated wheels and shafts and placing them in proper connection with one another so as to constitute an efficient machine for public service.

That the public frequently feels suspicious concerning railways no one will question. That this suspicion is sometimes well founded is beyond controversy; and that this same suspicion on the part of the public is often out of all proportion to the cause is equally true. By way of illustration, a personal incident may be alluded to. Several years ago, through the courtesy of a railway president, the writer came into possession, for private use, of the proceedings of a railway committee, which are extremely private in their nature. He had wondered many times what such a committee might be doing; and, because of the secrecy surrounding its proceedings, was inclined to believe that action contrary to public

interests was sometimes agreed upon. After a careful examination of the entire set of documents, he is prepared to state that he firmly believes that the publication of every page of these proceedings could bring nothing but good, or at least no harm, to the railways concerned. Throughout the reading of the many resolutions, orders, petitions and decisions one is impressed again and again with the earnest desire on the part of the railway men concerned to find the correct solution and to pursue a just line of action. But the public is much like the boy with a balloon—it wants to know what there is inside. The public factor in railway enterprise is so large compared with the private factor, that the public is fairly entitled to know, within reasonable limits, what is inside. And this the railways have recognized in many ways, for it is a familiar fact that no stock can sell well and maintain its level on the exchange unless the promoters take the public into their confidence to the extent of issuing full and accurate financial statements. The chairman of one of the great classification committees struck the core of the question when he said that the general public might without detriment to railway interests know everything his committee was doing and that public opinion would uphold their action, but that perhaps not enough was at present given to the public. A system of advisory councils makes it easy for both railways and people to acquaint each other with their doings, and the resulting knowledge will add as much to harmony between them as it will increase the value of the services performed by the railways.

B. H. MEYER.

*University of Wisconsin.*